

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KRAFT FOODS GLOBAL, INC., THE
KELLOGG COMPANY, GENERAL
MILLS, INC., and NESTLÉ USA, INC.,

Plaintiffs,

v.

UNITED EGG PRODUCERS, INC.,
UNITED STATES EGG MARKETERS,
INC., CAL-MAINE FOODS, INC., and
ROSE ACRE FARMS, INC.

Defendants.

No. 1:11-cv-08808

Judge Steven C. Seeger

**PLAINTIFFS' EVIDENCE OF
SHORT TERM MEASURES**

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In response to this Court’s request, Plaintiffs submit the following list of exhibits and testimony demonstrating the conspiracy’s practice of implementing short term measures to raise domestic prices.

1. **Ex. 268** (Looper stating “we will keep score by publishing the actual hen disappearance compared to the objective that will determine the industry’s level of profits ... [to] make our industry profitable for everyone.”).
 - a. **Tr. 1051-53** (Baker testifying about Plaintiff Exhibit 268 confirming the UEP “[tied] the number of hens in the egg industry disappeared to the profits of the egg-producing industry” by “keep[ing] score by publishing hen disappearance compared to the objective that will determine the industry's level of profits.”).¹
2. **Ex. 386** (Baker moving unopposed for “supply program to the members” to include a 5% flock reduction, immediate molt of 5% of flock, and to establish a hatch reduction program).
3. **Ex. 225** (Cal-Maine committing to the UEP Action Plan to reduce flock size by 5%, to delay hatch, to molt hens, and to dispose of spent hens on accelerated schedule).
 - a. **Tr. 1187:20-1188:1** (Baker testifying about Plaintiff Exhibit 241 and confirming the UEP “plan of action” included early slaughter and forced molting measures described as “allow[ing] companies to not go broke and make a profit”).
4. **Tr. 1201:8-1202:5** (Baker confirming the intent of a plan set forth by the UEP Marketing Committee minutes—to have egg producers molt hens at 62 weeks of age for four months in the short term as well as to reduce the average age of their flock by two weeks for a period of three years and slaughter hens two weeks earlier than planned for three years— was “for supplies to go down while demand was going up”).

¹ Selected excerpts from Mr. Baker’s and Mr. Rust’s trial testimony are attached hereto and concurrently filed as **Attachment A**.

5. **Tr. 1228:10-22** (Baker confirming that “Cal-Maine needed the industry to remove 5 million hens from the market in order to achieve that 23-cent price increase” and that “Cal-Maine agreed to participate in this crisis management plan with many other egg producers”).
6. **Tr. 1228:20-22; 1230:5-9** (Baker testifying about Crisis Management Plan that required early molt and slaughter, and confirming that “many of [Cal-Maine’s] competitors” had agreed to participate at the same time Cal-Maine submitted its written agreement”).
7. **Tr. 1340:20-25** (Baker testifying that “two ways that producers could help correct the downward slide” was through “dispos[ing] of old flocks four weeks earlier than has been done in the past 20 months, and return to your normal molt”).
8. **Tr. 1342:12-25** (Baker confirming “minor adjustments” meant the industry reductions in flock size, which would cause there to be fewer eggs on the market).
9. **Ex. 402** (Baker moving at UEP Board of Directors meeting “to recommend that the industry molt all flocks at 62 weeks and dispose of spent hens by 108 weeks”).
 - a. **Tr. 1344:18-1345:4** (Baker testifying about Plaintiff Exhibit 402, where Baker “identified pending problems for the financial stability of the industry if some minor supply adjustments were not made very quickly”).
10. **Ex. 151** (UEP Marketing Committee approving to “molt all flocks at 62 weeks of age and dispose of spent hens by 108 weeks of age and that this plan of action take place immediately” and requesting UEP members complete an intention form).
11. **Ex. 142** (Baker presenting to the UEP Board of Directors that “industry economics were in terrible state and producers should pay special attention to the statistics and then take care of the business for profits” and moving “to establish a plan” calling for early hen disposal).
12. **Ex. 592** (UEP Shell Egg Marketing Committee recommending to the UEP Board a plan for early disposal of hens or to reduce flock size).

- 13. Ex. 137** (UEP Shell Egg Marketing Committee stating members who stated their intention to reduce flock size “may have already been helpful to the market but everyone needed to stay committed to the program” and moving to recommend extension to “intention” program to dispose of hens early and reduce flock size).
- 14. Ex. 143** (listing UEP members executed “intention” forms to dispose of hens early or to reduce their flock size by 5%).
- 15. Ex. 105** (UEP Marketing Committee moving to recommend a program calling for flocks to be molted six weeks early or to dispose of hens six weeks earlier than planned).
- 16. Ex. 304** (UEP Marketing Committee recommending molt and disposal of flocks six weeks early and reporting member response through national layer inventory).
- 17. Ex. 788** (reporting flock reduction as a contributor to 2007 egg prices).
- 18. Dkt. 427-1, 186:21-187:3** (Rust stating Rose Acre was suspicious of UEP coordinating egg producers to restrict the supply of eggs to boost prices before joining the UEP).

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Respectfully submitted,

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